

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Andrea Masley

**STIPULATION FOR
APPOINTMENT OF REFEREE
TO SUPERVISE DISCLOSURE
PURSUANT TO CPLR 3104**

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 E

Hon. Andrea Masley

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel as follows:

WHEREAS, the parties in these actions served requests for disclosure, including demands for discovery and inspection as well as interrogatories, and corresponding responses to these requests, all pursuant to CPLR Article 31; and

WHEREAS, after service of the requests for disclosure and the responses thereto, certain disputes arose concerning the parties' disclosure obligations; and

WHEREAS, by joint letter dated February 2, 2018, the parties informed the Court of certain of these disclosure disputes and that, although they had met and conferred in

good faith on their disputes, it appeared that the parties had reached an impasse on some issues; and

WHEREAS, at a February 6, 2018 conference, the Court presented the parties with several disclosure dispute resolution options, including the retention of a private special referee to assist in resolving the parties' current disclosure disputes, as well as any other disclosure disputes that may arise in the future; and

WHEREAS, the parties discussed the disclosure dispute resolution options presented at the February 6, 2018 conference and, by joint letter dated February 22, 2018, informed the Court of their agreement that the preferred course is the appointment of a private special referee to assist in resolving the parties' disclosure disputes; and

WHEREAS, pursuant to CPLR 3104(b), the Court may permit all of the parties in an action to stipulate that a named attorney may act as referee to supervise all disclosure; and

WHEREAS, the parties have discussed and agree that Hon. Michael H. Dolinger (Ret.) of JAMS should be appointed, pursuant to CPLR 3104, as the referee to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties' joint letter dated February 2, 2018; and

WHEREAS, the parties further agree that any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee; and

WHEREAS, the parties further agree generally to split the fees and costs of the referee for his services in these actions equally between the National Football League and NFL Properties LLC (the “NFL Policyholders”), on the one hand, and the remaining parties (“Insurer Parties”), on the other hand, as more particularly described below; and

WHEREFORE, it is hereby stipulated and agreed by and among the undersigned counsel that:

1. Hon. Michael H. Dolinger (Ret.) of JAMS may act as a referee pursuant to CPLR 3104 to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties’ joint letter dated February 2, 2018, with all of the powers of the Court specified under CPLR 3104(c) available to him.

2. Any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee.

3. The referee’s fees and costs for his service in these actions will be paid by the parties, with such fees and costs split equally between the NFL Policyholders, on the one hand, and the Insurer Parties, on the other hand. The Insurer Parties’ share will be allocated on a per capita basis among the 12 insurer groups in this action, except to the extent a particular dispute is brought by or against fewer than all 12 insurer groups, in which event it will be allocated on a per capita basis among the involved insurer groups.¹ Notwithstanding anything to the contrary above, the NFL Policyholders shall have no

¹ All insurers except American Guarantee and Liability Insurance Company and Arrowood Indemnity Company agree to this allocation. This dispute will be addressed via separate submissions. The Insurer Parties request that the Court resolve this dispute pursuant to its authority under CPLR 3104(e).

responsibility for the referee's fees and costs for his service in connection with any dispute not involving the NFL Policyholders.

4. Special Referee Dolinger shall be provided a copy of the Stipulation and Order for the Production and Exchange of Confidential Information entered by this Court on May 22, 2013 and shall be deemed a permissible recipient of Confidential Information and Attorneys' Eyes Only Information pursuant to Paragraphs 6 and 7 thereunder.

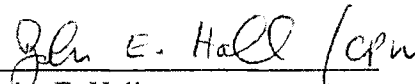
5. The parties consent to the entry of the Proposed Order attached as Exhibit A to this Stipulation, which embodies the foregoing stipulations and agreements.

This stipulation may be executed in counterparts, each of which shall be deemed an original but all of which constitute one and the same agreement. Facsimile signatures, and those executed with the permission of counsel, shall have the same force and effect as originals.

SO STIPULATED:

New York, New York
April 6, 2018

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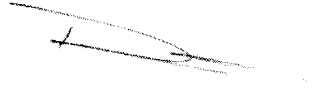
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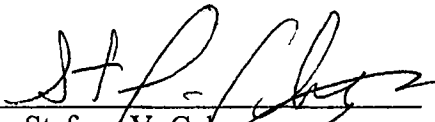


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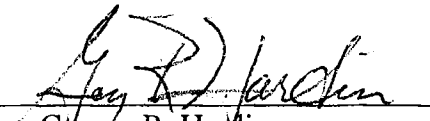
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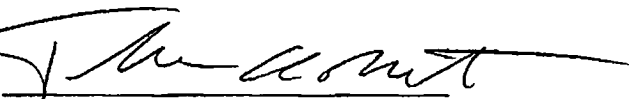
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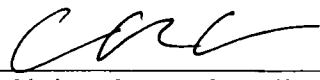
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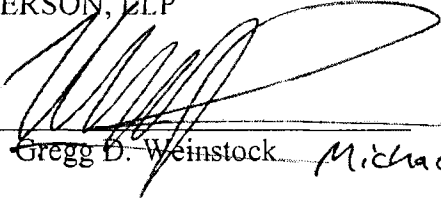
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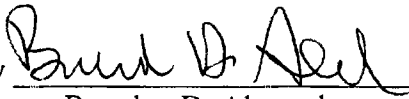
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